



INTERBRANCH COMMISSION FOR GENDER, RACIAL AND ETHNIC FAIRNESS

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Introduction

In 2007, there were 45,573 delinquency-related dispositions in Pennsylvania according to the Pennsylvania Juvenile Court Dispositions Report 2007, published by the Juvenile Court Judges' Commission. Of this number, 21,399, or 47% would have been eligible for expungement under Phase I of the Model Policy. The following categories of cases would have been automatically considered: Consent Decrees 8,399 (18.4%), Informal Adjustments 6,516 (14.3%), Complaints Withdrawn 3,580 (7.9%) and Warned/Counseled/Case Closed 2,904 (6.4%). In 2006, there were 662 expungement orders reported to the Juvenile Court Judges' Commission for disposition purposes.

The Pennsylvania Juvenile Act, Criminal Code, and Rules of Juvenile Court Procedure all contain provisions regarding the confidentiality and expungement of juvenile court and law enforcement records. However, as the numbers above demonstrate, expungements occur rarely in several counties and often juveniles are unaware of their availability

In the Pennsylvania juvenile justice system there are four major stakeholders that prepare most of the expungement motions in juvenile cases: prosecutors and law enforcement, Juvenile Probation Departments, defense attorneys (including juvenile defenders, court appointed attorneys and privately retained attorneys) and, Youth Support Organizations. It is critical that any long-term comprehensive strategy designed to create expungement initiatives in each county include these major stakeholders in the planning and implementation stages of the initiative.

- 1. Prosecutors and law enforcement** are actively engaged in Youth Aid Panels and similar diversion programs in various counties in the Commonwealth. Most of these diversion programs intersect cases prior to the filing of the petition, but after fingerprints, photographs and police reports have been secured. Once the child completes the diversion program, the case is dismissed without the child going before a judge.
- 2. The Juvenile Probation Department Expungement Model:** Generally speaking, juvenile probation departments throughout Pennsylvania are actively engaged in diverting cases at intake under the authorization of the informal adjustment procedures specified within the Juvenile Act and the Rules of Juvenile Court Procedure. In addition, probation departments often engage in expunging records generated by consent decrees, deferred adjudications, cases where prosecution is withdrawn with and without prejudice,

cases involving verdicts of not guilty, granted motions to suppress and granted motions for judgment of acquittal. In certain counties, probation officers have developed programs, with the support of prosecutors, juvenile defenders and judges for the “automatic expungement” of certain categories of juvenile records without the necessity of court hearings. The Cumberland County Model is the best known of these models. The Proposed Model Juvenile Expungement Policy is based upon the Cumberland Model.

- 3. Defense attorneys, including juvenile defenders, court appointed attorneys and privately retained attorneys** generally prepare expungement motions involving cases where children have been adjudicated delinquent, particularly when such adjudications involve major felonies. The overwhelming majority of these motions are resolved by agreement between juvenile defenders and prosecutors. Only a very small number of these cases involve contested hearings before judges.
- 4. Youth organizations that assist youth in pursuit of employment and educational opportunities** often help youth draft and file expungement motions. Many of these motions involve requests for expedited hearings because youth face dismissal from employment, eviction from housing, or bars to educational opportunities due to juvenile records.

The policies governing expungements and the practices and procedures utilized by these four major stakeholders vary dramatically from one county to the next. The net effect of these varying practices is that even though the statutory law of the Commonwealth grants children the right to have their records expunged the overwhelming majority of children who enter the juvenile justice system in Pennsylvania to not receive the assistance or have the means to exercise that right. Juvenile records that do not involve adjudications of delinquency have far-reaching consequences for youth. However, those that involve adjudications of delinquency often present greater challenges. Prior to October 2005 when the Supreme Court’s Rules of Juvenile Court Procedure went into effect, each county had its own policies, procedures and practices for petitioning courts for expungement orders. Since the enactment of the new procedural rules, probation officers, prosecutors, defense attorneys and other juvenile justice practitioners have been undertaking efforts to bring local practices and procedures into conformity with the new procedural rules. Though the procedural rules are new, the philosophy of Pennsylvania’s juvenile courts has remained constant since 1995.

The Balanced Approach to Restorative Justice (BARJ) is the guiding philosophy of the Juvenile Act and the Rules of Juvenile Court Procedure in Pennsylvania. It is referenced throughout both documents. BARJ focuses on three fundamental principles: 1) community protection, 2) offender accountability and 3) competency development. The expungement of juvenile records is critical for the development of competencies for juveniles. Juvenile justice practitioners are required to assist children, who become involved in the juvenile justice system, in developing competencies, becoming productive citizens and becoming fully reintegrated into society.

More specifically, BARJ sets forth as one of its goals that youth should develop “workforce development skills”. There is a fundamental belief in Pennsylvania that youth who have been successfully employed and have developed good relationships with employers and co-workers are at a lower risk for re-offending. Youth are tasked with getting a job, keeping a job and getting a promotion. The goal is self-sufficient living. Youth who have juvenile records often encounter circumstances where they are barred from access to public housing, resources for education and employment opportunities due to their juvenile records. The expungement of juvenile records substantially advances the goal of competency development contemplated by BARJ.

Many youth have overcome the challenges presented by adjudications of delinquency encountered early in life and gone on to make major contributions to American society. Some have become U.S. Senators,

federal judges, college professors, captains of fire departments, poets, Olympic athletes, authors, military leaders and television broadcasters. Although many of Pennsylvania's children in the juvenile justice system will not become famous, they can nevertheless live productive and meaningful lives. The Model Expungement Policy is a practical way of ensuring that as many children as possible have one less barrier to overcome.

The Model Expungement Policy was developed by the Expungement Subcommittee of the Criminal Justice Committee of The Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness in response to recent efforts to implement the expungement provisions of the Juvenile Act and the Rules of Juvenile Court Procedure. This policy does not amend or create any new statutory provisions. Rather, it provides a mechanism for judicial districts to comply with already existing expungement rules and legislation to ensure fewer youth in Pennsylvania encounter barriers to their successful transition into adulthood.

Proposed Juvenile Probation Expungement Policy – Phase I

I. General Policy

It shall be the policy of the Juvenile Probation Department to assist all eligible juveniles in obtaining the expungement of their juvenile records and probation reports. It shall be the policy of this department to maintain a uniform procedure for the expungement of juvenile records consistent with the Juvenile Act, the Rules of Juvenile Court Procedure and all other applicable policies and practices of the Family Courts of Pennsylvania and the Juvenile Court Judges' Commission.

II. Purpose of the Policy

The purpose of this policy is to provide for swift and barrier-free expungement of juvenile records without court-intervention when the law allows for their automatic expungement.

III. Duties of Juvenile Probation Department

A. Duties to Inform Juvenile and Establish Procedures

- 1.** At intake, or during the probation department's first official contact with the juvenile, the JPO shall provide the written policy to the juvenile, his parents, and his attorney. In addition, all shall be provided with a copy of the relevant provisions in the Juvenile Act and Rules of Juvenile Court Procedure governing expungements.
- 2.** The juvenile shall be notified at first contact with the probation department about the importance of working toward a successful discharge from juvenile probation jurisdiction and the importance of avoiding behavior that could lead to new arrests because when seeking an expungement, it will be important to demonstrate that the youth is not in need of further supervision, treatment or rehabilitation.
- 3.** The probation department shall provide the juvenile with a list of possible collateral consequences of a juvenile adjudication prior to the adjudicatory hearing.
- 4.** Upon successful discharge from juvenile court supervision, every juvenile shall be given a plastic wallet size card with basic expungement information on one side and contact information for the Probation Department on the other side.

- 5.** The Probation Department shall establish a procedure for the identification and tracking of juveniles that have been adjudicated delinquent.
- 6.** Prior to filing petitions for expungement in either automatic cases or discretionary cases, the Probation Department shall make reasonable efforts to notify the juvenile that it will be filing an expungement on his behalf through correspondence at his last known address.
- 7.** Upon the grant of an expungement, the probation department shall notify the juvenile that his or her record has been expunged by forwarding affidavits of expungement and a copy of the signed court order. If the expungement petition is denied, the Probation Department shall provide the juvenile with a copy of the signed order and guidance as to how to proceed.

B. Automatic Petitions for Juvenile Expungements

- 1. Juveniles Not Adjudicated Delinquent** – In cases involving juvenile who have not been adjudicated delinquent, the Probation Department shall automatically process the expungement motion and submit it for the Judge's signature.
- 2. Charges dismissed or case not substantiated** – In accordance with Section 6341(a) of the Juvenile Act, the Probation Department shall immediately prepare an expungement motion and submit it to the Court for its approval in cases where a Juvenile Court Judge or Master determined that the acts ascribed to the child were not committed by him.
- 3. Informal Adjustments** – The Probation Department shall file an expungement motion on behalf of each child immediately after the child is discharged from participation in an informal adjustment where the written allegation is informally adjusted pursuant to Section 6323(a) of the Juvenile Act and Rule 312 of the Rules of Juvenile Court Procedure.
- 4. Youth Aid Panels** – The Probation Department shall file an expungement motion on behalf of each child immediately after the child is discharged from participation in a Youth Aid Panel Program directed by the District Attorney's Office or a law enforcement organization, where such organizations do not have an established expungement program in accordance with Section 6323 (a) of the Juvenile Act and Rule 312 of the Rules of Juvenile Court Procedure.
- 5. Consent Decrees** – Pursuant to Section 9123 of the Criminal Code, the Probation Department shall file an expungement motion six months after the child is discharged from court supervision under the Consent Decree authorized by Section 6340 of the Juvenile Act and Rules 370,371 and 373 of the Rules of Juvenile Court Procedure.
- 6. Five years after discharge from supervision** – Five years after each juvenile has been discharged from Court supervision, the Probation Department shall automatically process the expungement paperwork for each child as authorized by Section 9123 of the Juvenile Act.

C. Discretionary Petitions for Juvenile Expungements

1. **Child is over age 18** – Where a child seeks an expungement of a juvenile record and the child is at least 18 years old but less than five years have passed since the child was discharged from Juvenile Court supervision, the Probation Department **may** file an expungement motion in accordance with Section 9123 of the Criminal Code if it determines that there are meritorious circumstances (employment, educational opportunities, military service, etc.) underlying the request that might elicit the support of the District Attorney's Office.

D. Preparation and Processing of the Expungement Motion

1. The motion shall take the form of a proposed court order and be prepared in accordance with Rules 170 and 172 of the Rules of Juvenile Court Procedure.
2. Unless the attorney for the Commonwealth consents to expunging the records, the court shall schedule and conduct a hearing, and thereafter grant or deny the motion as specified by Rule 170(E).

IV. Implementation Plan

- A. Pilot policy in probation departments in 3-4 counties (of varying classes)
- B. Assess efficacy of model policy after 6 months – to determine the efficacy and success of the expungements, evaluate whether pilot counties have retroactively expunged records of juveniles who fall into the automatic categories and are currently providing information to juveniles at intake about their rights to expungement. Track numbers of expungements using new policy versus old policy. Measure the stress of the policy's implementation on the probation department's existing duties and responsibilities.
- C. If deemed effective, propose legislative/rule change or recommendation to implement policy more broadly.
- D. Develop Phase 2 of policy to provide for increased expungements in cases where eligibility is not automatic.

For further information:

- *Second Chances - Giving Kids A Second Chance to Make a Better Choice*, OJJDP Juvenile Justice Bulletin, May 2000
- *Collateral Consequences of Juvenile Records*, Prepared by Jen Mihal, Esq., Lisa Campbell, Esq.
- *Juvenile Delinquency Records: Handbook and Expungement Guide*, published by the Juvenile Court Judges' Commission, principal author Lisa J. Freese, Director of Policy & Program Development, Juvenile Court Judges' Commission
- *Juvenile Records Expungement: A Guide for Defense Attorneys*, published by the Juvenile Law Center, principal author, Riya Saha Shah, Esq.
- *Juvenile Records: A Know Your Rights Guide for Youth in Pennsylvania*, published by the Juvenile Law Center, principal author, Riya Saha Shah, Esq.
- Pennsylvania Juvenile Delinquency Benchbook, Juvenile Court Judges Commission 2003.
- 18 Pa.C.S. §§ 9122 and 9123
- 42 Pa.C.S. §§ 6307, 6308, 6309
- Pa. R. Juv. Ct. Proc. 160, 170, 330